

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 14-N-01741-YDR
)	
IWO OSTOJA-LOJASIEWICZ,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 244259,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Iwo Ostoja-Lojasiewicz (Respondent) was charged with willfully violating California Rules of Court, rule 9.20, by failing to file a declaration of compliance with that rule in conformity with the requirements of rule 9.20(c), as required by an order of the Supreme Court. Even though Respondent had adequate notice of the trial dates, he failed to appear at the trial in this matter, and his default was entered. Thereafter, the Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.81 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to appear at trial, and the attorney fails to have the default set aside or vacated

¹ Unless otherwise indicated, all references to rule(s) are to this source.

within 45 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on October 16, 2006, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 14, 2014, the State Bar filed and properly served the Notice of Disciplinary Charges (NDC) on Respondent by certified mail, return receipt requested, to his membership records address.³ The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) Respondent filed an Answer to the NDC on June 12, 2014.

Trial in this matter was scheduled to commence on August 4, 2014, at 9:30 a.m. Notice of the trial was served on Respondent on May 9, 2014, by first-class mail, postage prepaid, at the address set forth in the caption of his Answer to the NDC.⁴

Trial commenced on August 4, 2014. Deputy Trial Counsel William Todd appeared for the State Bar. Respondent did not appear. As a result, the court entered Respondent's default in an order filed on August 4, 2014. The order entering the default was properly served on

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

³ This matter was originally assigned to the Honorable Richard A. Platel. Effective November 6, 2014, however, this matter was reassigned to the undersigned judge.

⁴ This address is Respondent's membership records address.

Respondent at his membership records address by certified mail, return receipt requested.⁵ The order notified Respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. He has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days to file motion to set aside default].) On September 29, 2014, the State Bar filed and properly served the petition for disbarment on Respondent by certified mail, return receipt requested, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) as of September 29, 2014, Respondent had not contacted the State Bar since the date the order entering his default was served;⁶ (2) there are no other disciplinary matters pending against Respondent; (3) Respondent has a record of prior discipline; and (4) the Client Security Fund has not made any payments resulting from Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on October 29, 2014.

Respondent has a prior record of discipline. Pursuant to a Supreme Court order filed on November 13, 2013, Respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years on conditions including that he be suspended for the first 90 days of probation. Respondent was also ordered to comply with California Rules of Court, rule 9.20. In this prior disciplinary proceeding, in which Respondent participated,

⁵ The order was returned to the State Bar Court as unclaimed and unable to be forwarded. However, the return receipt was returned to the State Bar Court reflecting receipt by "P. Shin" and a delivery date of September 17.

⁶ This is the same date the order entering Respondent's default was filed.

Respondent was found culpable of improperly communicating directly with a judge outside of open court, without the consent of all other attorneys in the matter or in the presence of all other counsel in such matter, in writing without a copy furnished to such other counsel, not in an ex-parte matter, and upon the merits of a contested matter pending before the judge.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case Number 14-N-01741 (Rule 9.20 Matter)

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys), by not filing, with the clerk of the State Bar Court, by January 22, 2014, a declaration of compliance with California Rules of Court, rule 9.20, in conformity with the requirements of rule 9.20(c), as required by the Supreme Court in order number S213222.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied, and Respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) Respondent had actual notice of the proceeding and adequate notice of the trial date;
- (3) the default was properly entered under rule 5.81; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default

support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to appear for trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that Respondent Iwo Ostojka-Lojasiewicz be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Iwo Ostojka-Lojasiewicz, State Bar number 244259, be involuntarily enrolled as

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an inactive member of the State Bar of California, effective three calendar days after service of this decision and order. (Rule 5.111(D).)

Dated: January 23, 2015

YVETTE D. ROLAND
Judge of the State Bar Court